

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
	)	
	)	
Macy's, Inc.	)	
	)	

CPSC Docket No. 11-C0006

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Macy's, Inc. ("Macy's") and the U.S. Consumer Product Safety Commission ("Commission") staff ("Staff") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle Staff's allegations set forth below.

PARTIES

2. Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 ("CPSA").

3. Macy's is a corporation organized and existing under the laws of Delaware, with its principal offices located in Cincinnati, Ohio. At all relevant times, Macy's sold apparel and other products.

STAFF ALLEGATIONS

4. During periods of time from April 2006 through October 2010, Macy's, through its subsidiaries, imported, sold, and/or held for sale various quantities of the following children's upper outerwear products with drawstrings at the neck: Quiksilver, Inc. - Hide & Seek hooded sweatshirts; Jerry Leigh of California, Inc. - Harajuku Lovers hooded jackets; La Jolla Sport USA, Inc. - O'Neill hooded sweatshirts; Dysfunctional Clothing, LLC - Lost hooded sweatshirts;

Macy's Merchandising Group, Inc. - Epic Threads hooded sweatshirts; Macy's Merchandising Group, Inc. - Greendog sweaters; C-MRK, Inc. - Ocean Current hooded sweatshirts; NTD Apparel, Inc. - Hello Kitty hooded sweatshirts; S. Rothschild & Co., Inc. - wool coats; and VF Contemporary Brands, Inc. - Splendid hooded jackets and hooded vest sets. The products identified in this paragraph are collectively referred to herein as "Garments."

5. Macy's sold the Garments, and/or held the Garments for sale, to consumers.

6. The Garments are "consumer product[s]," and, at all relevant times, Macy's was a "manufacturer" and/or "retailer" of those consumer products, which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(5), (8), (11), and (13), 15 U.S.C. § 2052(a)(5), (8), (11), and (13).

7. In February 1996, Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear ("Guidelines") to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, Staff recommends that no children's upper outerwear in sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816-97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards associated with drawstrings and should ensure that garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper

outerwear sold in the United States complies with ASTM F1816-97. The letter states that Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act ("FHSA") section 15(c), 15 U.S.C. § 1274(c). The letter also references the CPSA's section 15(b) (15 U.S.C. § 2064(b)) reporting requirements.

10. Macy's informed the Commission that there had been no reported incidents or injuries associated with the Garments.

11. Macy's distribution in commerce of the Garments did not meet either the Guidelines or ASTM F1816-97, failed to comport with Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. The Commission, in cooperation with Macy's and/or other firms that were the Garments' manufacturers, importers, or distributors, announced recalls of the Garments.

13. Based in part on information available through the sources set forth in paragraphs 7 through 9 herein, Macy's had presumed and actual knowledge that the Garments distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). Macy's obtained information that reasonably supported the conclusion that the Garments contained a defect that could create a substantial product hazard or that the Garments created an unreasonable risk of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), Macy's was required to immediately inform the Commission of the defect and risk.

14. Macy's knowingly failed to immediately inform the Commission about the Garments as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), and as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). This failure

violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this knowing failure subjected Macy's to civil penalties.

15. On multiple occasions from March 2009 to January 2010, Macy's offered Garments for sale, sold Garments, and/or distributed Garments in commerce that were subject to voluntary corrective action taken by the Garments' manufacturers, in consultation with the Commission. The Commission notified the public of that action, or Macy's knew or should have known of that action.

16. Macy's knowingly engaged in the acts alleged in paragraph 15 as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). These acts violated CPSA section 19(a)(2)(B), 15 U.S.C. § 2068(a)(2)(B). Pursuant to CPSA section 20, 15 U.S.C. § 2069, these acts subjected Macy's to civil penalties.

#### MACY'S RESPONSIVE ALLEGATIONS

17. Macy's denies Staff's allegations above, including, but not limited to, any claim that Macy's failed to timely report to the Commission the sale or distribution of any children's upper outerwear products with drawstrings pursuant to section 15(b) of the CPSA.

18. Macy's promptly notified the Commission pursuant to section 15(b) of the CPSA upon learning that certain children's upper outerwear products contained drawstrings.

#### AGREEMENT OF THE PARTIES

19. Under the CPSA, the Commission has jurisdiction over this matter and over Macy's.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Macy's, or a determination by the Commission, that Macy's knowingly violated the CPSA.

21. In settlement of Stall's allegations, Macy's shall pay a civil penalty in the amount of seven hundred fifty thousand dollars (\$750,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the Commission via [www.pay.gov](http://www.pay.gov).

22. Macy's agrees that it will not seek or accept, directly or indirectly, indemnification, reimbursement, insurance, or any other form of compensation or payment, including, but not limited to, cash, account credit, or set-off, from any vendor or supplier from which Macy's acquired the Garments, or from any other firm or person, for the civil penalty that Macy's agrees and is ordered to pay pursuant to the Agreement and Order.

23. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the *Federal Register*.

24. Macy's shall conduct annual training of all employees responsible for purchasing children's upper outerwear, including training regarding all drawstring prohibitions, restrictions, guidelines, rules, and laws, and shall include such training when first hiring or assigning employees responsible for purchasing children's upper outerwear.

25. Within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement, Macy's shall conduct a comprehensive review of its existing children's apparel inventory to identify any children's upper outerwear bearing drawstrings at the neck ("Drawstring Garments").

26. Within ten (10) calendar days of the completion of the review Macy's conducts pursuant to paragraph 25, Macy's shall submit to Staff an Inventory Review Completion Report, covering the review that Macy's conducted pursuant to paragraph 25. The report shall, at a minimum, include the following:

a. A comprehensive list of all Drawstring Garments that Macy's has identified, including, but not limited to, the following: item description; style number(s); garment sizes in inventory; number of units of each size in inventory; date(s) of purchase; identity of the company/ies from which the garment was purchased; and (if applicable) the period of time during which Macy's sold and/or offered for sale the Drawstring Garment.

b. One sample of each available size of each Drawstring Garment identified during the inventory review;

c. A description of the step(s) that Macy's has taken to eliminate the strangulation hazards posed by each of the Drawstring Garments; and

d. The following certification signed by an officer of Macy's:

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that I have examined and am familiar with the information submitted in this document and all attachments, and that the information is true and correct. I am aware that there are significant penalties for submitting false information to federal officials, including the possibility of fines and imprisonment.

The report shall be directed to the following Staff:

Seth B. Popkin, Lead Trial Attorney  
Office of the General Counsel  
Division of Compliance  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

27. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Macy's knowingly, voluntarily, and completely waives any rights it may have in this

matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Macy's failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

28. The Commission may publicize the terms of the Agreement and the Order.

29. The Agreement and the Order shall apply to, and be binding upon, Macy's and each of its successors and assigns.

30. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Macy's and each of its successors and assigns to appropriate legal action.

31. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

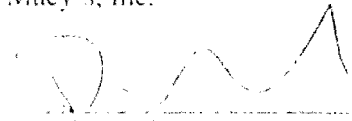
32. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Macy's agree that severing the

provision materially affects the purpose of the Agreement and the Order.

Macy's, Inc.

Dated: 6/21/11

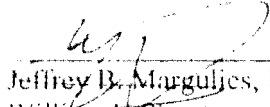
By:



Dennis Broderick, Executive Vice President,  
General Counsel, and Secretary  
Seven West Seventh Street  
Cincinnati, Ohio 45202

Dated: 6/22/11

By:



Jeffrey B. Margulies, Esq.  
William L. Troutman, Esq.  
Fulbright & Jaworski L.L.P.  
555 South Flower Street, 41st Floor  
Los Angeles, CA 90071

Counsel for Macy's, Inc.

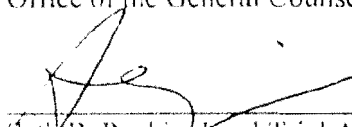
U.S. CONSUMER PRODUCT SAFETY  
COMMISSION STAFF

Cheryl A. Falvey  
General Counsel

Mary B. Murphy  
Assistant General Counsel  
Office of the General Counsel

Dated: 6/28/11

By:



Seth B. Popkin, Lead Trial Attorney  
Division of Compliance  
Office of the General Counsel



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CONSUMER PRODUCT SAFETY COMMISSION

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Macy's, Inc. )  
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CPSC Docket No. 11-C0006

ORDER

Upon consideration of the Settlement Agreement entered into between Macy's, Inc. ("Macy's") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Macy's, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED, that the Settlement Agreement be, and hereby is, accepted; and it is

FURTHER ORDERED, that Macy's shall pay a civil penalty in the amount of seven hundred fifty thousand dollars (\$750,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the Commission via [www.pay.gov](http://www.pay.gov). Upon the failure of Macy's to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Macy's at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b); and it is

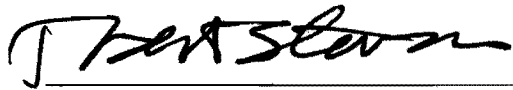
FURTHER ORDERED, that Macy's shall fully perform all of its obligations

(continued on next page)

as set forth in the Settlement Agreement at paragraphs 24, 25, and 26.

Provisionally accepted and provisional Order issued on the 8<sup>th</sup> day of July 2011  
2011.

BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", written over a horizontal line.

Todd A. Stevenson, Secretary  
U.S. Consumer Product Safety Commission